

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4503 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

D R JETAVAT

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR PM RAVAL for the Petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/08/96

ORAL JUDGEMENT

1. Mr. H.L.Jani and Mukesh Patel are present in the Court. They made a statement that the papers of this case have not been sent to them and as such, they have no instruction in the matter and in the absence of the papers they are unable to make the submissions.

2. Heard learned counsel for the petitioner. The petitioner, a police inspector in the Police department of the Government of Gujarat filed this writ petition.

The petitioner made a prayer of quashing of the order dated 7-9-1982 and further prayed for giving him the deemed date of promotion to the post of police inspector with effect from 23rd October 1971. Under the order dated 7-9-1982, annexure 'J', the aforesaid claim of the petitioner was not accepted by the respondents. In the month of August, 1971, the Departmental Selection Board met for considering the cases of the police sub inspector for their promotion to the post of police inspector. The Board has considered the case of the petitioner also for promotion to the post of police inspector, but he was not found suitable for promotion, and as such, his name was not brought on the select list. The person junior to him Shri K.P.Parmar was found fit for promotion and his name was placed in the select list. Under the order dated 23rd October, 1971, the persons who were found suitable by the Departmental Selection Board in its meeting held in August, 1971 were given the promotion which includes the name of Shri K.P. Parmar. The petitioner made a representation on 7-11-1971 complaining therein his supersession in the promotion. The next meeting of the Board for considering the cases of the police sub inspector for promotion to the post of police inspector was held in the month of February, 1972. In this meeting the case of the petitioner for promotion was again considered and this time he was found fit for promotion and therefore his name was included in the select list. Under the order dated 7-3-1972, the petitioner was given the promotion on the post of police inspector. After 7-3-1972, the petitioner has not made any grievance nor he made a representation claiming thereunder the deemed date of promotion. The gradation list of the police inspector showing therein the position as on 1-1-1982 has been published in which the petitioner's name has been placed at Sr. no.163 and the name of Shri K.P. Parmar has been placed at Sr. no. 138. There is no dispute that Shri K.P. Parmar was junior to the petitioner in the cadre of police sub-inspector. The petitioner made a representation against the gradation list and under the order impugned in this writ petition at annexure 'J' that has been rejected. The petitioner claimed his seniority over Shri K.P. Parmar by claiming his deemed date of promotion from 23rd October, 1971.

3. The counsel for the petitioner contended that under the order dated 7-3-1972 one Shri K.N. Doshi has also been promoted alongwith him on the post of P.I., but he was given the deemed date of promotion from 23rd October, 1971 as it reflects from the gradation list. In the reply to the Special Civil Application, the respondents have given out that Shri Doshi was deprived

of his deemed date of promotion in the month of October, 1971 on account of wrong placement in seniority list of P.I.. In view of this fact, the ground which has been raised by the counsel for the petitioner of discrimination is not tenable. The promotion to the post of P.I. is to be made on the criteria of merits. After going through the relevant provisions of Rule 53, 54 and Appendix III of the Gujarat Police Manual, it comes out that the promotion to the post of P.I. is to be made on the basis of merits and not only on the basis of seniority-cum-merit. The petitioner has only a right of consideration for promotion which right has not been denied. It is different matter that in comparison of the merits the petitioner could not stand to the merit and superseded by his junior, which is permissible if a junior person has a meritorious record in comparison to the senior. Certainly it can be a case of supersession which had exactly happened in the present case. It is not correct to say on the part of the petitioner that he was given the promotion on his making representation under the order dated 7-3-1972. In the next meeting of Departmental Selection Board his case was again considered and on comparison of merits this time he was found suitable and accordingly placed on the select list. It is true that the petitioner has no adversity in his service record, but he will not be entitled for promotion automatically where the criteria for promotion is merit. He has to stand to the comparative merits which is to be assessed by the Departmental Selection Board and in comparison thereof if he has been superseded, then it cannot be said that it is an arbitrary act of the respondents.

4. This court sitting under Article 226 of the Constitution of India will not sit as an appellate authority above the decision of the Departmental Selection Board. Mainly it is the job of the Departmental Selection Board to adjudicate on merits of the person for promotion to the post of P.I. and on assessment thereof if the petitioner was not found suitable to be placed on select list that decision of the said authority is not questionable by the petitioner under Article 226 of the Constitution of India. The petitioner has a right of consideration for promotion and not a right of promotion and his case has been considered. I do not find any illegality in the order made and impugned in this writ petition by the respondent. The claim of the petitioner for deemed promotion from 23rd October, 1971 deserves no acceptance.

5. In the result, this Special Civil Application

fails and the same is dismissed. Rule discharged.
Interim relief, if any, granted by this Court stands
vacated. No costs.

zgs/-